

REFERENCE TITLE: justification; deadly force; law enforcement

State of Arizona  
Senate  
Fifty-fifth Legislature  
Second Regular Session  
2022

## **SB 1388**

Introduced by  
Senators Quezada: Terán; Representatives Andrade, Hernandez M

AN ACT

AMENDING SECTION 13-410, ARIZONA REVISED STATUTES; RELATING TO  
JUSTIFICATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-410, Arizona Revised Statutes, is amended to  
3 read:

4 13-410. Justification; use of deadly physical force in law  
5 enforcement; definition

6 A. The threatened use of deadly physical force by a person against  
7 another is justified pursuant to section 13-409 only if a reasonable  
8 person effecting the arrest or preventing the escape would believe the  
9 suspect or escapee is:

10 1. Actually resisting the discharge of a legal duty with deadly  
11 physical force or with the apparent capacity to use deadly physical force;  
12 or

13 2. A felon who has escaped from lawful confinement; or

14 3. A felon who is fleeing from justice or resisting arrest with  
15 physical force.

16 B. The use of deadly physical force by a person other than a peace  
17 officer against another is justified pursuant to section 13-409 only if a  
18 reasonable person effecting the arrest or preventing the escape would  
19 believe the suspect or escapee is actually resisting the discharge of a  
20 legal duty with physical force or with the apparent capacity to use deadly  
21 physical force.

22 C. The use of deadly force by a peace officer against another is  
23 justified pursuant to section 13-409 only when the peace officer  
24 reasonably believes, BASED ON THE TOTALITY OF THE CIRCUMSTANCES, that it  
25 is necessary:

26 1. To defend himself or a third person from what the peace officer  
27 reasonably believes to be the use or imminent use of deadly physical  
28 force.

29 2. To effect an arrest or prevent the escape from custody of a  
30 person ~~whom~~ WHO the peace officer reasonably believes:

31 (a) Has committed, HAS attempted to commit, is committing or is  
32 attempting to commit a felony involving the use or ~~a~~ threatened use of a  
33 deadly weapon.

34 (b) Is attempting to escape by use of a deadly weapon.

35 (c) Through past or present conduct of the person, which is known  
36 by the peace officer, ~~that the person~~ is likely to endanger human life or  
37 inflict serious bodily injury to another unless THE PERSON IS IMMEDIATELY  
38 apprehended ~~without delay~~.

39 ~~(d) Is necessary to lawfully suppress a riot if the person or~~  
40 ~~another person participating in the riot is armed with a deadly weapon.~~

41 ~~D. Notwithstanding any other provisions of this chapter, a peace~~  
42 ~~officer is justified in threatening to use deadly physical force when and~~  
43 ~~to the extent a reasonable officer believes it necessary to protect~~  
44 ~~himself against another's potential use of physical force or deadly~~  
45 ~~physical force.~~

D. THE USE OF DEADLY PHYSICAL FORCE IS IMMINENT WHEN, BASED ON THE TOTALITY OF THE CIRCUMSTANCES, A REASONABLE PEACE OFFICER IN THE SAME SITUATION WOULD BELIEVE THAT A PERSON HAS THE PRESENT ABILITY, OPPORTUNITY AND APPARENT INTENT TO IMMEDIATELY CAUSE DEATH OR SERIOUS PHYSICAL INJURY TO THE PEACE OFFICER OR A THIRD PERSON. AN IMMINENT HARM IS NOT MERELY A FEAR OF FUTURE HARM, NO MATTER HOW GREAT THE FEAR AND NO MATTER HOW GREAT THE LIKELIHOOD OF THE HARM, BUT IS ONE THAT, FROM APPEARANCES, MUST BE INSTANTLY CONFRONTED AND ADDRESSED.

E. FOR THE PURPOSES OF THIS SECTION, "TOTALITY OF THE CIRCUMSTANCES" MEANS ALL THE FACTS KNOWN TO THE PEACE OFFICER AT THE TIME, INCLUDING THE CONDUCT OF THE PEACE OFFICER LEADING UP TO THE USE OF DEADLY FORCE.

Sec. 2. Legislative findings

The legislature finds:

1. That the authority to use physical force, conferred on peace officers by section 13-410, Arizona Revised Statutes, as amended by this act, is a serious responsibility that must be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life.

2. That every person has a right to be free from excessive use of force by officers acting under color of law.

3. That peace officers should use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.

4. That the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.

5. That the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.

6. That individuals with physical, mental health, developmental or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions as their disability may affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement.